IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1168 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHIMA BHANA PATEL

Versus

KISHOR LAXMAN

Appearance:

MS MR KG VAKHARIA for Appellant Nos.1-4

MR SURESH M SHAH for Respondent Nos.1-2,4-5

UNSERVED-EXPIRED (N) for Respondent No. 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 23/10/2002

ORAL JUDGEMENT

1. This appeal, by the original defendant Nos.1 to 4 in Civil Suit No.155 of 1976 in the Court of Joint Civil Judge (S.D.), Rajkot, is directed against the judgement

and decree dated 30-01-1980 passed by the Joint Civil Judge (S.D.), Rajkot whereby the learned judge decreed the said suit filed by respondent Nos.1 to 3. Respondent Nos.4 and 5 were the original defendant Nos.5 and 6.

2. The original plaintiff Nos.1 and 2 - Kishor Laxman and Vinod Laxman and the defendant No.5 - Magan Laxman were brothers. The original plaintiff No.3 Raniben Ghusabhai was their grandmother. Their mother Parvatiben Laxman was defendant No.6.

3. The suit was filed by Kishor Laxman and Vinod Laxman who were minors and their grandmother Raniben Ghusabhai to set aside the document of exchange dated 07-04-1975 which had been executed by Magan Laxman under which the lands belonging to three brothers were exchanged for the lands of defendant Nos.1 to 4. The deed had been executed by Magan Laxman for himself and for his two brothers - Kishor Laxman and Vinod Laxman. According to the plaintiffs, there was no legal necessity for the transfer and it was not for the benefit of the joint family estate and it was not binding upon them. They, therefore, filed the suit for declaration that the said deed was illegal and void and not binding upon them. They also prayed for possession of the lands in question from defendant Nos.1 to 4 and also prayed for mesne profits of the suit lands from 07-04-1975.

4. The suit was resisted by defendant Nos.1 to 4, who denied the various allegations made in the claim. According to them, there was drought during three years before the deed was executed and the plaintiffs were required to manage for their house hold affairs and to perform social ceremonies and to pay up agricultural debts. Hence, it was necessary for them to exchange the land. They also needed money for the marriage expenses of defendant No.5.

5. The learned trial Judge after raising necessary issues arising from the pleadings of the parties recorded the oral and documentary evidence and came to the conclusion that the lands in question belonged to the joint family property of the three brothers but there was no legal necessity for the transaction. He, therefore, granted the declaration that the deed involving exchange of the suit lands Nos.540 and 613 of village Jasdan, described in para (2) of the plaint, was not biding upon the share of the plaintiffs and that the plaintiffs were entitled to the joint possession of the suit lands. They were, therefore, ordered to be put in joint possession of the suit lands with the defendant Nos.1 to 4. He

dismissed the claim for mesne profits.

6. The original defendant Nos.1 to 4 have, therefore, filed this appeal. It appears that the appellant No.1 and respondent No.3 died during the pendency of the appeal. It also appears from the note submitted by the office that in 1991, the learned advocate for the appellants had filed Civil Application (St.) No.182 of 1991, but it was not known whether the said Civil Application was registered as Pakka Number and it was not traceable. In any case, the heirs of the appellant No.1 and the respondent No.3 are already on record. Therefore, the names of the appellant No.1 and respondent No.3 are ordered to be deleted.

7. Ms.Archna Amin, learned advocate appearing for the appellants submitted that the learned Judge was in error in recording the finding that there was no legal necessity for the transaction. She also took me through the judgment and the oral evidence led by the parties.

8. The learned trial Judge first recorded the finding that the lands in question was the joint family property. There is sufficient evidence to support this finding. The learned Judge has not committed any error in recording the same. However, the real question was whether there was any legal necessity for the exchange of lands when the elder brother Magan Laxman executed the deed on behalf of himself and his two minor brothers. The learned trial Judge has elaborately discussed this aspect in detail. It appears that there was a recital in the deed that the land of three brothers was worth Rs.40,000/= while the land of the defendants was worth Rs.14,000/- and hence, the defendants had paid an additional amount of Rs.26,000/= to the plaintiffs. However, the learned Judge in view of the evidence which was led found that this recital was not sufficient to call the transaction as one for legal necessity or for the benefit of the estate. After discussing oral evidence he observed in para 52 of the judgement that the defendant No.5 had given away two pieces of his land to the defendant No.1 in exchange at a time. But as against this the debt was only for Rs.1,000/=. There was no evidence that the financial position of defendant No.5 was so weak that he had to dispose of the suit property worth nearly Rs.40,000/= in order to pay the debt of Rs.1,000/= and marriage expenses of defendant No.5 himself. He also observed that apart from the fact that there is no sufficient and satisfactory evidence on record to prove that the defendant No.5 was indebted for a sum of Rs.1,000/=, there was no evidence on record that the creditor had been pressing hard for recovery of that

amount and, therefore, the defendant No.5 had no alternative but to alienate the suit land. There was also nothing on record to show as to what amount was or was to be expended by defendant No.5 on his own marriage. The learned Judge also found that the defendant No.5 had not made any reasonable inquiry about the necessity for the transaction.

9. The learned trial judge who had the opportunity to see the demeanor of witnesses has recorded these findings after discussing their evidence in detail. It is not shown how these findings are erroneous. There is no reason to differ from his appreciation of the evidence.

10. The result that there is no substance in the appeal and the same is dismissed. No order is to costs.

Sd/-

[M.C.PATEL,J]

'Bhavesh'